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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE APPLICATIONS OF:

MM DOCKET NO. 93-241

DARRELL BRYAN
SBH PROPERTIES, INC.

Tusculum, Tennessee

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
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DATE OF HEARING: July 26, 1994

VOLUME: 2

PLACE OF HEARING: Washington, D.C.

PAGES: 10-175

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 In the matter of:)
)
)

DARRELL BRYAN)
 SBH PROPERTIES, INC.)

MM DOCKET NO. 93-241

Tusculum, Tennessee)
 -----)

The above-entitled matter came on for hearing pursuant to
 Notice before Judge John M. Frysiak, Administrative Law Judge,
 at 2000 L Street, N.W., Washington, D.C., in Courtroom 4, on
 Tuesday, July 26, 1994, at 10:00 a.m.

APPEARANCES:

On Behalf of Darrell Bryan:

J. RICHARD CARR, Esquire
 P.O. Box 70725
 Chevy Chase, Maryland 20813-0725

On Behalf of SBH Properties, Inc.:

TIMOTHY K. BRANDY, Esquire
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 Brentwood, Tennessee 37027-1692

FREE STATE REPORTING, INC.
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	<u>Witness</u>	<u>I N D E X</u>			
		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1	Darrell Bryan				
2	By Mr. Brady	31			
3	By Mr. Carr		104		
4	Richard H. Mertz				
5	By Mr. Brady	109			
6	By Mr. Carr		156		
7	William Seaver				
8	By Mr. Carr		162		
		<u>E X H I B I T S</u>			
		<u>Identified</u>	<u>Received</u>	<u>Rejected</u>	<u>Withdrawn</u>
9	<u>JOINT</u>				
10	Exhibit No. 1	13	13		
11	Exhibit No. 2	13	13		
12	<u>SBH</u>				
13	Exhibit No. 1	18			
14	Exhibit No. 2	18			
15	Exhibit No. 3	19			
16	Exhibit No. 4	19			
17	Exhibit No. 5	19	161		
18	Exhibit No. 8	22			
19	Exhibit No. 9		102		
20	Exhibit No. 10		102		
21	Exhibit No. 11	50	102		
22	Exhibit No. 12	52	102		
23	Exhibit No. 13	53	102		
24	Exhibit No. 14	64	102		
25	Exhibit No. 15	82	102		
	Exhibit No. 16	141			
	<u>BRYAN</u>				
	Exhibit No. 1	16			
	Exhibit No. 2	17			
	Exhibit No. 3	17			
	Exhibit No. 4	17			
	Exhibit No. 5	17			
	Exhibit No. 6	21			
	Exhibit No. 8	23			
	Exhibit No. 9	29			
24	Hearing Began: 10:00 a.m.		Hearing Ended: 3:11 p.m.		
25	Lunch Break Began: 12:16 p.m.		Lunch Break Ended: 1:22 p.m.		

P R O C E E D I N G S

1 JUDGE FRYSIAK: All right. Are we ready? This is
2 the continuation of a hearing, Tusculum, Tennessee. May we
3 note your appearances.

4 MR. BRADY: Yes, Your Honor. For SBH Properties,
5 Timothy K. Brady.

6 MR. BRYAN: For Darrell Bryan, J. Richard Carr.

7 JUDGE FRYSIAK: Any preliminary matters?

8 MR. BRADY: I guess it would be preliminary, You
9 Honor. We have one stipulation and we also have the -- since
10 it's a joint exhibit -- the joint engineering exhibit which we
11 -- we have exchanged previously. And I would like to hand the
12 original copy of each of those to the court reporter and ask
13 if we could have the joint engineering exhibit marked as Joint
14 Exhibit 1.

15 MR. BRADY: And, I guess we can offer it -- can we
16 offer that one at this time as a joint exhibit?

17 JUDGE FRYSIAK: It's also received.

18 MR. BRADY: Okay. And the second -- the stipulation
19 between the parties which relates to this hearing, Your Honor,
20 we'd ask to have that marked as Joint Exhibit 2.

21 JUDGE FRYSIAK: Yes, it may be marked.

22 MR. BRADY: And offer that at this time.

23 JUDGE FRYSIAK: Be received.

24 (Whereupon, the document referred to
25

1 was marked for identification as
2 Joint Exhibits 1 and 2 and received
3 into evidence.)

4 MR. BRADY: Now, I don't know -- I did have this
5 question, Your Honor, we had -- I had filed request for
6 admission in the case and Mr. Carr filed a response and I
7 didn't know whether Your Honor wants us to -- I would intend
8 to refer to those in findings and I didn't know whether you
9 would like to have that made an exhibit or whether you just
10 want us to refer to the filing as made before.

11 JUDGE FRYSIK: Okay. Would they be before me
12 otherwise, would they?

13 MR. BRADY: I -- I'm not certain --

14 JUDGE FRYSIK: I've never seen the admissions.

15 MR. BRADY: Okay, so you don't have copies or --
16 well, I have -- I didn't make enough copies of these exhibits
17 but I can get that -- I can identify them and offer them into
18 --

19 JUDGE FRYSIK: Sure. You may --

20 MR. BRADY: Is that acceptable Mr. Carr?

21 MR. CARR: Okay.

22 MR. BRADY: Your Honor, I have the -- let me show
23 this to Mr. Carr first if he -- Your Honor. This is a --

24 MR. CARR: Um-hum.

25 MR. BRADY: I left off the service list -- document.

1 And then --

2 MR. CARR: Right. Okay.

3 MR. BRADY: Your responses.

4 MR. CARR: Okay.

5 MR. BRADY: Your Honor, this is a twenty-six page
6 exhibit. It's request for admission and the response to the
7 admissions. And I think this is the number -- we've exchanged
8 four previously for SBH so this would be SBH --

9 JUDGE FRYSIK: About six. You have five pending
10 today, right? And that four are previously submitted. And
11 then exhibit five be offered today.

12 MR. CARR: The lease exhibit is five.

13 MR. BRADY: Is it? Okay. Thank you. Thank you.
14 This would be SBH Exhibit --

15 JUDGE FRYSIK: Number six.

16 MR. BRADY: Six. And I'd like to offer it at this
17 time and ask the lady to have it -- and have it -- to withdraw
18 it for making copies for Your Honor and the other parties on
19 the Court Order.

20 JUDGE FRYSIK: Permission granted.

21 MR. BRADY: I'll just -- I'll pick it up later.

22 JUDGE FRYSIK: All right.

23 MR. BRADY: That's all I have, Your Honor,
24 preliminary.

25 JUDGE FRYSIK: Nothing else?

1 MR. BRADY: We're -- Your Honor, Mr. Carr and I were
2 going to go ahead and identify our, without offering, our
3 comparative exhibits. Would that be appropriate to go ahead
4 -- we, we would like to go ahead and get it in to the court
5 reporter if possible.

6 JUDGE FRYSIAK: Comparative exhibits?

7 MR. BRADY: Well all of the -- yeah all of the
8 exhibits. The earlier ones as well. It's up to Your Honor.
9 We had brought them to, you know, to provide to the court
10 reporter.

11 MR. CARR: We thought we would identify them and
12 then -- and not offer them into evidence but just the
13 original, and a copy would be out of our hands. We're afraid
14 they'll get lost.

15 MR. BRADY: Into the record.

16 MR. CARR: My secretary hasn't supplied me with
17 those exhibits.

18 MR. BRADY: We were just going to identify them and
19 go and hand the original and one to the court reporter and --

20 MR. CARR: For example, this is the Bryan exhibits.
21 Let me give you those. We were just going to identify them
22 and --

23 JUDGE FRYSIAK: All right. Your first in docket
24 order, why don't you --

25 MR. CARR: Do you want me to individually identify

1 each exhibit, Your Honor, like we normally do?

2 Your Honor, I'd like to have marked for
3 identification, Bryan Exhibit Number 1, which is entitled,
4 Integration and Diversification Statement of Darrell Bryan.
5 It consists of ten pages, plus a signed declaration.

6 JUDGE FRYSIK: All right. Could you excuse me for
7 just one minute. I'll go get a list of those exhibits. I
8 don't have it with me.

9 MR. CARR: Certainly, Your Honor.

10 MR. BRADY: Yes, Sir.

11 (Off the record. Back on the record.)

12 JUDGE FRYSIK: All right. Sorry for the delay. Go
13 ahead. You were identifying exhibit number 1?

14 MR. CARR: Correct, Your Honor. Would you like me
15 to re-identify that?

16 JUDGE FRYSIK: Go ahead.

17 MR. CARR: Exhibit Number 1 is the title,
18 Integration and Diversification Statement of Darrell Bryan and
19 it consists of ten pages plus the signed declaration.

20 JUDGE FRYSIK: All right. It may be marked.

21 (Whereupon, the document referred to
22 was marked for identification as
23 Bryan Exhibit Number 1.)

24 MR. CARR: And Exhibit Number 2 I would like to have
25 marked for identification. It's entitled, Ownership and

1 Control and that consists of one page and a signed
2 declaration.

3 JUDGE FRYSIAK: Yes, it may be marked.

4 (Whereupon, the document referred to
5 was marked for identification as
6 Bryan Exhibit Number 2.)

7 MR. CARR: And Bryan Exhibit Number 3 is identified
8 as a document entitled, Integration Proposal. It consists of
9 five pages plus the signed declaration. I would like to have
10 marked for identification Bryan Exhibit Number 4, which is
11 entitled, Diversification of Ownership of Mass Media. That
12 consists of one page of text and the signed declaration.

13 JUDGE FRYSIAK: Yes.

14 (Whereupon, the document referred to
15 was marked for identification as
16 Bryan Exhibits Number 3 and 4.)

17 MR. CARR: And finally, Your Honor, I would like to
18 have marked Bryan Exhibit Number 5, which is entitled,
19 Auxiliary Power Proposal. And that, again, consists of one
20 page of text plus the signed declaration.

21 JUDGE FRYSIAK: All right.

22 (Whereupon, the document referred to
23 was marked for identification as
24 Bryan Exhibit Number 5.)

25 MR. CARR: And I have given the court reporter the

1 original. I will now give him another copy, Your Honor. And
2 that will complete --

3 JUDGE FRYSIAK: Fine. Thank you.

4 MR. CARR: -- our identification of those exhibits.

5 MR. BRADY: Your Honor, I have previously exchanged
6 -- I have exchanged five exhibits and I would hand the
7 original and one copy to the court reporter. The first
8 exhibit is a three page exhibit entitled, Statement Regarding
9 the Applicant. I request that that be marked for
10 identification as SBH Exhibit Number 1.

11 JUDGE FRYSIAK: It may be marked.

12 (Whereupon, the document referred to
13 was marked for identification as SBH
14 Exhibit Number 1.)

15 MR. BRADY: And the second exhibit is a -- an page
16 exhibit entitled, Statement of William H. Seaver. I request
17 that be marked as SBH Exhibit 2.

18 JUDGE FRYSIAK: Yes. It may be marked.

19 (Whereupon, the document referred to
20 was marked for identification as SBH
21 Exhibit Number 2.)

22 MR. BRADY: Next, I have a three page exhibit
23 entitled, Statement of J. Kent Bewley, B-E-W-L-E-Y. And I
24 request that be marked as Exhibit 3.

25 JUDGE FRYSIAK: Yes. It may be marked.

1 (Whereupon, the document referred to
2 was marked for identification as SBH
3 Exhibit Number 3.)

4 MR. BRADY: And I then have a three page exhibit
5 entitled, Statement of L. Paul Hite. And I request that be
6 marked as SBH Exhibit 4.

7 JUDGE FRYSIK: Yes. It may be marked.

8 (Whereupon, the document referred to
9 was marked for identification as SBH
10 Exhibit Number 4.)

11 MR. BRADY: I guess I'll just go ahead and identify
12 the last one. It's a Statement of William H. Seaver and it is
13 thirty one pages in length. I ask that it be marked as SBH
14 Exhibit 5.

15 JUDGE FRYSIK: Yes. It may be marked.

16 (Whereupon, the document referred to
17 was marked for identification as SBH
18 Exhibit Number 5.)

19 MR. BRADY: Your Honor, I have a question. What --
20 you had indicated in your order, an early order in the case,
21 regarding the exchange of exhibits, that we exchange a copy of
22 our integration statement. Mr. Carr made his an exhibit. I
23 exchanged a copy of mine but did not make it exhibit. Does
24 Your Honor want that to be made an exhibit? I -- I didn't
25 know what to do with the copies I gave the court reporter. I

1 have the Integration Statement.

2 JUDGE FRYSIAK: I don't think it --

3 MR. BRADY: Does it need to be in the record or just
4 available to the parties?

5 JUDGE FRYSIAK: There's no challenge to the
6 Integration Statement is there?

7 MR. CARR: No, Your Honor.

8 JUDGE FRYSIAK: I don't need it.

9 MR. BRADY: It was included in the copies that were
10 exchanged with Your Honor and the other parties.

11 JUDGE FRYSIAK: All right. Okay, anything else,
12 preliminarily? All right, Mr. Carr. I -- top of the order
13 begin

14 MR. CARR: Your Honor, the parties have entered into
15 the stipulations which have previously been identified with
16 regard to Mr. Stone and with the result that Mr. Puckett whose
17 testimony is set forth in Bryan Exhibit Number 6, has not been
18 called for cross examination and the agreement that I reached
19 with counsel for SBH Properties is that we would put into the
20 record as an exhibit the deposition transcript of Mr. Puckett
21 and then he would not be called for cross examination.

22 MR. BRADY: That's correct, Your Honor. I have
23 those transcripts here, prepared as exhibits ready to be
24 marked if you want me to do that now or --

25 JUDGE FRYSIAK: All right.

1 MR. BRADY: Once the exhibit's offered or whatever.

2 MR. CARR: I could start off, Your Honor, by
3 identifying Bryan Exhibit Number 6, which is entitled,
4 testimony of Stan Puckett. That consists of two pages plus
5 his signed declaration. And since the parties have reached a
6 stipulation, I would also offer that exhibit number 6 into
7 evidence.

8 JUDGE FRYSIK: All right.

9 MR. BRADY: We have no objection to that.

10 JUDGE FRYSIK: Without objection I'll receive
11 exhibit one -- or six.

12 (Whereupon, the document referred to
13 was marked for identification as
14 Bryan Exhibit Number 6 and received
15 into evidence.)

16 MR. CARR: Next, Your Honor, I'd like to identify
17 the exhibit number 7, which is entitled, Testimony of Walter
18 J. Stone and that is a nine page exhibit plus declaration.
19 Again, the parties have reached a stipulation. The
20 stipulation has already been received into evidence and Mr.
21 Stone has not been called for cross examination. And so I
22 would like to move the admission of exhibit number 7.

23 JUDGE FRYSIK: And we have no objection of that
24 exhibit?

25 MR. BRADY: Your Honor, should I at this time go

1 ahead and mark and offer these transcripts of the deposition
2 testimony?

3 JUDGE FRYSIAK: I don't -- believe exhibit 7.

4 MR. BRADY: First of all, Your Honor, I guess as SBH
5 -- I have asked to have marked as SBH Exhibit 7 the deposition
6 of -- of Mr. Stan Puckett.

7 JUDGE FRYSIAK: How many sets do you have --

8 MR. BRADY: Oh, do you need the number of pages or
9 just the --

10 JUDGE FRYSIAK: No. Just the -- just the bindings
11 --

12 MR. CARR: No objections to the offer of the
13 depositions --

14 MR. BRADY: It's forty-three pages, if you -- Your
15 Honor.

16 MR. CARR: Yes, and we had agreed, Your Honor, that
17 that would be received into evidence.

18 MR. BRADY: And, Your Honor, I would ask to have
19 marked as SBH Exhibit 8, the deposition of Walter J. Stone.
20 It's thirty-seven pages in length.

21 JUDGE FRYSIAK: Okay. I'll receive Exhibit 8.

22 (Whereupon, the document referred to
23 was marked for identification as SBH
24 Exhibit Number 8 and received into
25 evidence.)

1 MR. CARR: Your Honor, I'd next like to identify
2 Exhibit Number 8, entitled, Testimony of Darrell Bryan. That
3 consists of thirteen pages of text and attachments, plus a
4 declaration.

5 JUDGE FRYSIAK: Yes, it may be marked -- you're
6 offering it.

7 MR. CARR: And I would also move that you receive
8 into evidence --

9 JUDGE FRYSIAK: Any objection to eight?

10 MR. BRADY: No objections to eight, Your Honor.

11 JUDGE FRYSIAK: Okay. Without objection I will
12 receive Exhibit 8.

13 (Whereupon, the document referred to
14 was marked for identification as
15 Bryan Exhibit Number 8 and received
16 into evidence.)

17 MR. CARR: And finally, Your Honor, I would like to
18 identify Exhibit Number 9, which is entitled, Testimony of
19 Richard H. Mertz Engineering Statement. And that consists of
20 thirteen pages of material and text plus the signed
21 declaration.

22 JUDGE FRYSIAK: It may be marked. The offer is also
23 made --

24 MR. CARR: And I would offer that into evidence,
25 Your Honor.

1 MR. BRADY: Your Honor, I do have some objections to
2 this exhibit. Beginning with the first page, most of my
3 objections are fairly similar, Your Honor. The first two
4 paragraphs -- well, the first paragraph I would argue is
5 irreverent. It relates to -- it addresses allegations that
6 were made in a motion to enlarge issues that led to the -- to
7 the enlargement of issues in this case. But those allegations
8 were relevant to the enlargement of the issues but are not
9 relevant to the resolution of the issues. And therefore, I
10 would suggest the first paragraph is irreverent.

11 JUDGE FRYSIAK: It serves as background information
12 for the speaker. I'll overrule your objection.

13 MR. BRADY: Okay. The second paragraph, Your Honor,
14 I object to for a similar reason, that it -- that it's
15 irreverent, but also, more importantly, because it constitutes
16 or consists of argument as opposed to factual -- testimony of
17 a factual nature. And argument is a proper role for court
18 counsel to make on behalf of the party but not for a witness
19 to make.

20 JUDGE FRYSIAK: Are you referring to this language
21 using the word sophistry?

22 MR. BRADY: Yes. And, the first part of it
23 basically relates to claims and the rest of it is -- the
24 balance of the paragraph is of the nature of argument as
25 opposed to factual statement.

1 MR. CARR: The only sentence, Your Honor, that could
2 possibly be looked upon as being somewhat argumentative would
3 be that sentence with the word sophistry in it. The rest of
4 it is --

5 JUDGE FRYSIAK: I agree. I see it as background
6 information --

7 MR. CARR: And it's background information.

8 JUDGE FRYSIAK: Except for the second to last
9 sentence of the second paragraph, beginning with SBH employ
10 sophistry, ending with the word transmitter. Strike that
11 sentence.

12 MR. CARR: You would strike that sentence, Your
13 Honor?

14 MR. BRADY: Thank you, Your Honor. The -- at the
15 top of page two, I would move to strike the last two
16 sentences, again as argument, beginning with Bryan's 1992
17 application.

18 MR. CARR: Your Honor, this is a -- this is
19 testimony by an expert witness and he's giving his opinion and
20 I would oppose the objection.

21 MR. BRADY: Your Honor, it appears to be more a
22 matter of argument than opinion. There are opinions in here,
23 in other places. This does not appear to be an -- I mean,
24 there are opinions made about his view of what constitutes
25 good engineering practices and things of that sort would be

1 appropriate, but making arguments regarding whether or not
2 Bryan's effort was a good faith effort, that's -- it's an
3 argument, or even a conclusion.

4 MR. CARR: But it's a conclusion based on his
5 analysis of what was done, Your Honor, as an expert.

6 JUDGE FRYSIK: Well, you know, both of you are
7 correct, I think. I agree that the word -- is a conclusion
8 which should best be left to me to determine and that the --
9 the rest of that sentence, using the word substance as a
10 requirement is to establish is simply a -- and it's not
11 evidence. It's simply a proposition. So I'll strike the last
12 sentence of the -- what constitutes the third, fourth and
13 fifth line on page two, Exhibit 9.

14 MR. BRADY: Thank you, Your Honor. Next, at the
15 bottom -- last paragraph, not the final sentence on the page,
16 but the next to the last beginning, it may not be concluded,
17 that sentence I would move to strike as argument.

18 MR. BRADY: I disagree, Your Honor. I think that is
19 the conclusion of this witness.

20 JUDGE FRYSIK: Yeah, I'll agree. I'll leave it in
21 subject to cross examination.

22 MR. BRADY: Next, Your Honor, on page three, the
23 final paragraph on the page, well, I withdraw that objection.
24 I withdraw that. Page four then, Your Honor, at the bottom of
25 the page, the last sentence, by not submitting this page, that

1 sentence, the final sentence of that paragraph, I move to
2 strike that as argument.

3 MR. CARR: On the contrary, Your Honor, that's a
4 statement of fact.

5 JUDGE FRYSIK: That's what I see it as, factual.
6 You can rebut that -- The objection is overruled.

7 MR. BRADY: And at the top of page five, the first
8 sentence, SBH also makes an apples and oranges comparison, I
9 move to strike that as argument.

10 MR. CARR: Again, I don't think that's
11 argumentative, Your Honor.

12 JUDGE FRYSIK: You know, it's a statement made by
13 an expert. Is he -- and available for cross examination?

14 MR. CARR: Yes, he is -- just here, Your Honor.

15 JUDGE FRYSIK: You may examine him in cross
16 examination as to the value of that, but it's the statement
17 made by an expert, qualified.

18 MR. BRADY: Okay, Your Honor, my next objection is
19 the same paragraph, the next to the last sentence. It says,
20 since SBH has specified a larger tower. It goes on to say
21 their cost comparison is not valid. I would argue that -- I
22 would move to strike that on the basis it is argument.

23 JUDGE FRYSIK: You may cross examine him on that.
24 Overruled.

25 MR. BRADY: Okay, Your Honor. The -- okay, at the

1 bottom of page five and carrying over to the first word on
2 page six, I would move to strike that on the grounds that that
3 is argument.

4 MR. CARR: I'm sorry, which -- which one are we --

5 MR. BRADY: The last paragraph. The last paragraph.

6 MR. CARR: The entire last paragraph?

7 MR. BRADY: Yeah. It carries over to the next page,
8 one word does.

9 JUDGE FRYSIK: In my professional opinion -- I'll
10 overrule your objection -- your motion to strike.

11 MR. BRADY: And I object to the first paragraph of
12 the top of page six on the basis that it is argument.
13 Obviously, not the first sentence, but the majority of what's
14 stated in that paragraph.

15 JUDGE FRYSIK: You talking about the coaxial cable
16 paragraph?

17 MR. BRADY: Yes, sir. The first paragraph. Not the
18 second.

19 JUDGE FRYSIK: Do you want to strike the entire
20 paragraph?

21 MR. BRADY: Yes, Your Honor.

22 MR. CARR: It's a statement of fact, Your Honor.
23 He's discussing his review of another statement previously
24 submitted.

25 JUDGE FRYSIK: Yes. I'll leave it in subject to

1 cross examination.

2 MR. BRADY: And, I -- the last sentence on page --
3 well not, the last sentence -- the last line of the page of
4 page six, Your Honor, SBH continued claim that larger cable is
5 required is groundless, I move to strike that as argument.

6 JUDGE FRYSIK: It's a conclusion of his
7 professional opinion. Objection is overruled.

8 MR. BRADY: Your Honor, my next and final objection
9 is -- begins at the end of page seven, carries over to the top
10 of page eight. The beginning, adjusting the original 1992
11 estimated costs and carrying on to the end of that paragraph.
12 I move to strike that as argument as opposed to a factual
13 statement.

14 MR. CARR: That's the -- of the problem. You may
15 cross examine him on that.

16 MR. BRADY: That's all the objections I have, Your
17 Honor.

18 MR. CARR: Your Honor, with that I would -- I would
19 move the admission of Exhibit Number 9 as you have modified it
20 with those strikeouts.

21 JUDGE FRYSIK: I'll receive Exhibit 8 -- or Exhibit
22 9, rather. Who's up next?

23 (Whereupon, the document referred to
24 was marked for identification as
25 Bryan Exhibit Number 9 and received

1 into evidence.)

2 MR. CARR: That concludes all of the exhibits for --
3 for Mr. Bryan.

4 JUDGE FRYSIAK: Are we going to proceed with
5 testimony or cross examination?

6 MR. CARR: I -- we're prepared, Your Honor, to
7 proceed. Mr. Bryan is here and prepared to take the stand.

8 JUDGE FRYSIAK: Okay.

9 MR. BRADY: Your Honor, I would request that the
10 witnesses be -- or the witness, there's only two, but that the
11 witness not testify and be sequestered during the first
12 witnesses testimony.

13 JUDGE FRYSIAK: What's your response? Any
14 objection?

15 MR. CARR: I -- I'll leave that to you, Your Honor.
16 I don't have strong feelings either way. If you feel it's not
17 proper for Mr. Mertz to sit here --

18 JUDGE FRYSIAK: Well, what's the reason for your
19 request?

20 MR. BRADY: Well, Your Honor, it's simply so that --
21 that questions that might be asked to one witness would not
22 color the response of another.

23 JUDGE FRYSIAK: One is an applicant the other one is
24 a professional engineer.

25 MR. BRADY: That's correct, Your Honor.

1 JUDGE FRYSIAK: Whose testimony --

2 MR. BRADY: But they're both in the same proposal.

3 JUDGE FRYSIAK: Whose testimony would be colored?

4 MR. BRADY: Well, the second witness's testimony
5 could be colored by the first witness's testimony. Or based
6 -- or informed by the first witness's testimony, perhaps is
7 the better word.

8 JUDGE FRYSIAK: I'll overrule your request.

9 Whereupon,

10 DARRELL BRYAN

11 having first been duly sworn, was called as a witness herein
12 and was examined and testified as follows:

13 JUDGE FRYSIAK: Will you please have a seat and for
14 the record, please state your full name and address.

15 MR. BRYAN: My name is Darrell Bryan. 1204 Christy
16 Court, Greenville, Tennessee.

17 JUDGE FRYSIAK: All right.

18 DIRECT EXAMINATION

19 BY MR. BRADY:

20 Q Good morning, Mr. Bryan.

21 A Good morning.

22 Q Do you have a copy of your testimony in front
23 of you?

24 A I do.

25 Q The -- on the first page of your testimony,

1 | page one at Exhibit 8, you -- you refer to your contact and
2 | communications with BSW Broadcast Supply West?

3 | A Right.

4 | Q Okay. You did not obtain a written -- a
5 | written price quotation from BSW, is that correct?

6 | A Correct.

7 | Q You -- you relied on a catalog and telephone
8 | calls?

9 | A Yes.

10 | Q Would -- could -- would that company have
11 | supplied you a -- a written quote if you had requested one?

12 | A Yes.

13 | Q Okay. And they -- I presume if they provided
14 | you a written quote they would have provided you a written
15 | quote for all of the items you were interested in?

16 | A Yes.

17 | JUDGE FRYSIAK: Which exhibit are you tracking?

18 | MR. BRADY: I'm sorry, Your Honor. It's Exhibit 8.

19 | JUDGE FRYSIAK: Eight?

20 | MR. BRADY: Bryan Exhibit 8.

21 | BY MR. BRADY:

22 | Q The -- in referring to -- further down you indicate
23 | that the cost of the items was calculated using discounts
24 | which you were told you had received?

25 | A Yes.

1 Q The discounts you were referring to, that was a --
2 was that a twenty to thirty percent. Is that what you're
3 talking about?

4 A Yes.

5 Q Okay. So you weren't given specific prices for the
6 items. Is that correct? You -- were given a percentage
7 discount which then you applied to the list?

8 A I referred to the catalog and based on my past
9 experience of purchasing from this company through my -- I
10 received these discounts. I just -- I conferred with them and
11 made sure those discounts were available on the actual --.

12 Q I see. Okay. That was my next question. What --
13 you say, you previously had purchased -- you mentioned prior
14 purchases in here. You had made purchases from this company?

15 A Yes.

16 Q What equipment had you purchased previously from
17 them, do you recall?

18 A Not really. I've been buying from that company
19 since 1981, roughly

20 Q Okay.

21 A I just, basic -- and this type of equipment.

22 Q Further down the same paragraph you indicate -- you
23 say that most of the equipment priced is not obtained from BSW
24 or based on a catalog. Is there -- do you rely on a catalog
25 other than a BSW catalog?